

**IN THE UNITED STATES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

UNITED STATES OF AMERICA *

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v.

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CRIM. NO. 02:06cr271-WKW

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COREY HARVEY

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MOTION TO DISMISS

Comes now the defendant Corey Harvey, by and through counsel and moves the Court to dismiss this action upon the grounds that his right to a speedy trial granted by 18 U. S. Code 3161(c)(1) has been violated to his detriment and to the advantage of the government. Defendant Harvey cites the following in support of this motion:

1. Defendant Corey Harvey was arrested on November 1, 2005, upon the same facts and law as are at issue in this cause. He was indicted on November 15, 2005 on those charges in Case No. 2:05cr267-T. He was incarcerated during the pendency of said charges and sought to obtain a speedy adjudication of the charges. He filed a Motion to Dismiss on December 5, 2005, because of the refusal of the government to provide the affidavit and search warrant upon which Defendant Harvey intended to base a Motion to Suppress similar to the one filed by Defendant Harvey this date. That Motion to Suppress is based in part on false information contained in the discovery materials concealed from Defendant in said previous case. Attached hereto is Defendant's previous Motion to Dismiss.

2. On December 9, 2005, a government Motion to Dismiss of December 7, 2005 was granted. The same case was then reindicted on November 16, 2006. More than Seventy (70) days have elapsed between the first and second indictments and during the pendency of the two cases. The government is not entitled to repeatedly deny the right to speedy trial by the ruse of dismissing and reindicting. U.S. v. Addush-Shakur, 465 F.3d 458 (10th Cir.2006).

WHEREFORE, Defendant Corey Harvey moves this Court dismiss this action.

Respectfully submitted this 28th day of December, 2006.

s/Bruce Maddox
Bruce Maddox (MAD013)
Attorney for Corey Harvey
6728 Taylor Court
Montgomery, Alabama 36117
Phone: (334) 244-7333
Fax: (334) 260-9600

CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of December, 2006, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to appropriate parties.

s/Bruce Maddox
Of Counsel

**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

V.

COREY HARVEY,

Defendant.

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CASE NO. 2:05-CR-267-T

MOTION TO DISMISS

Comes now Defendant Corey Harvey (hereinafter "Defendant") and moves the Court to dismiss this cause, and as grounds therefor says as follows:

1. On November 7, 2005, the date of the Preliminary Hearing and Detention Hearing, undersigned counsel requested a copy of the affidavit used to obtain the search warrant that resulted in seizure of evidence to to be used against the Defendant. That request was made to government counsel. Undersigned was referred to Agent Neil Thompson. He did not provide the affidavit, telling undersigned counsel that he had discussed the matter with the "other" case agent, and that it had been decided that they would wait for "discovery" to produce it.
2. Undersigned counsel contacted Assistant United States Attorney Susan Redmond about it. She commented that the affidavit was public record, and that she should be able to get it to me. She did not.
3. Still trying to obtain the affidavit, staff for undersigned counsel contacted the Montgomery Municipal Court (the issuing court) and was told they had no record of the search warrant or affidavit.
4. Having no choice but to wait for discovery to be produced at arraignment pursuant to local rule, undersigned counsel found that discovery was not available at arraignment (November 30, 2005). Counsel for the government stated that the

only thing in the file was the **affidavit for the arrest warrant**, that had already been provided to the defendants. The Court ordered the United States to produce required discovery by Friday, December 2, 2005.

5. Undersigned counsel recited the facts stated in paragraphs 1 through 3 above and requested a specific order related to the affidavit for search warrant. The Court ordered that the affidavit be produced by the end of the day on November 30, 2005. It was not produced.
6. On Friday, December 2, 2005, a staff member visited the United States Attorney's office to pick up the ordered discovery. She was told that it was not available. Late that date, she called to inquire about going back to pick-up the discovery. She was informed that it had been mailed.
7. The discovery package arrived by U.S. Mail this date. It contains only the aforementioned **affidavit for the arrest warrant**, and fails to comply with the orders of the court both as to the Order to produce the affidavit for the search warrant by the end of the day, November 30, 2005, and to produce the rest of discovery by December 2, 2005. In fact, no meaningful discovery had been provided.
8. The Defendant is incarcerated upon motion of the government and cannot defend himself adequately due to the failure of the government to comply with local rules and with case-specific Orders of this Honorable Court.

WHEREFORE, Defendant Corey Harvey moves the Court to dismiss this cause and order his release from custody.

Respectfully submitted this the 5th day of December, 2005.

S/Bruce Maddox
Bruce Maddox (MAD013)
Attorney for Corey Harvey

Of Counsel:

Law Offices of Bruce Maddox
6728 Taylor Court
Montgomery, Alabama 36117
Phone: (334) 244-7333
Fax: (334) 260-9600

CERTIFICATE OF SERVICE

_____ I hereby certify that on this the 5th day of December, 2005, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to Susan Redmond, Assistant United States Attorney, Donald G. Madison, and Susan James.

Respectfully submitted.

S/Bruce Maddox
Bruce Maddox (MAD013)
Attorney for Corey Harvey